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Overnite Transportation Company and Thomas Moulton, Petitioner and Teamsters Local 657.
Case 16-RD-1468

December 20, 2001

ORDER

BY CHAIRMAN HURTGEN AND MEMBERS LIEBMAN AND WALSH

The National Labor Relations Board has considered the Employer's request for special permission to appeal the Regional Director's administrative determination to hold the instant petition in abeyance. Having reviewed the entire matter, the Board has decided to affirm the Regional Director's determination for the reasons set forth below.

The Employer is a provider of "less-than-truckload" freight services throughout the United States and in Canada and Mexico. The Employer operates through numerous service centers, including the facility in Laredo, Texas. The Laredo facility opened on December 8, 1997. Pursuant to an election on September 2, 1999, the Union was certified on September 10, 1999. On November 10, 1999, the Board issued its decision in *Overnite Transportation Co.*, 329 NLRB 990,¹ in which the Board ordered, inter alia, that the Employer post at all its service centers a notice to employees remedying certain unfair labor practices which the Board found had affected employees "on a nation-wide basis." As the dissent acknowledged, the Employer did not post any notices because it was seeking court review of the Board's Order.

On December 18, 2000, employee Thomas Moulton filed the instant decertification petition. By letter dated February 13, 2001, the Regional Director informed the parties that he was holding the petition in abeyance. The letter stated:

While the Laredo, Texas service center is not specifically found to be a facility where such unfair labor practices occurred, a reasonable interpretation of the Board Order is that such posting is mandated at the Laredo facility as part of the nation-wide posting ordered by the Board. . . . Accordingly, as no posting has occurred in Laredo, which would remedy the unfair labor practices found by the Board in *Overnite Transpor-*

tation Company, supra, I will hold in abeyance any further processing of the petition in the instant case at this time. It has long been the policy of the Board that no representation election may be held until unfair labor practices, which may affect the outcome of the election have been fully remedied.

We find that the Regional Director acted within his discretion in holding the instant petition in abeyance pending compliance with the *Overnite* decision. See NLRB Casehandling Manual, generally Secs. 11730-11734. We agree with the Regional Director that the nationwide posting requirement applies to Laredo. The Board in *Overnite* did not limit the posting to facilities where the unfair labor practices underlying *Overnite* had occurred or to facilities which were in existence at the time of those unfair labor practices. Rather, the Board viewed those unfair labor practices as so pervasive and egregious as to affect employees "on a nationwide basis" and require a posting by the Employer at all the Employer's facilities nationwide.

The Employer and our dissenting colleague contend that because the Laredo facility opened subsequent to the commission of the unfair labor practices underlying the *Overnite* order, the Laredo employees were not "coerced" by any unlawful conduct and that it is unreasonable to hold the petition in abeyance. We view the notice posting as a necessary remedial step to assure all the Employer's employees that the Employer is repudiating its unlawful conduct and erasing its lingering effects and that the Board's protection of employees' rights is being upheld. Thus, we disagree with our dissenting colleague that notice posting is merely "prophylactic." The Regional Director's decision does not foreclose the possibility that a decertification election will be held in the future after the posting period; rather, it only precludes the holding of an election at this time.

Accordingly, we find that the Regional Director acted within his discretion in holding the instant petition in abeyance.

ORDER

The Regional Director's administrative order holding the instant petition in abeyance pending posting of a notice pursuant to the order in *Overnite*, supra, is affirmed.

Dated, Washington, D.C. December 20, 2001

Wilma B. Liebman, Member

Dennis P. Walsh, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

¹ *Overnite Transportation*, enfd. 240 F.3d 325 (4th Cir. 2001), ptn. for rehearing en banc granted and panel decision vacated July 5, 2001 argument heard on September 25, 2001.

CHAIRMAN HURTGEN, dissenting.

I would grant the Employer's request for special permission to appeal the Regional Director's decision.

The Regional Director blocked further processing of the decertification petition filed on December 8, 2000, in this Laredo, Texas unit. He did so because the Board's remedial notice had not been posted at Laredo at the time of the petition. The Board had ordered the posting in 329 NLRB 990 (*Overnite I*). I agree that the Board Order required a nationwide posting and thus covered the Laredo facility. The Employer had not posted because it was seeking court review of the Board's Order.¹

The instant case is unique in that the Laredo unit did not even exist as of the time of the conduct found unlawful in 329 NLRB 990. Thus, *these employees were not*

coerced by any unlawful conduct. Accordingly, it is not reasonable to hold that a fair election cannot be held among these employees. Indeed, a fair election was held in Laredo in September 1999, i.e., after the unfair labor practices, and the Union prevailed.

To be sure, the Board, as a prophylactic matter, ordered that all employees be apprised of their statutory rights, even at places where no unlawful conduct occurred. But this is a far cry from saying that a fair election cannot be held among these uncoerced employees. Indeed, the notice of election will apprise employees of their rights.

Dated, Washington, D.C. December 20, 2001

Peter J. Hurtgen,

Chairman

NATIONAL LABOR RELATIONS BOARD

¹ The circuit court initially enforced the Board Order, but later granted *Overnite's* petition for a rehearing en banc. Despite this later action, the Board order (including inter alia posting in the Laredo unit) is not stayed. See Sec. 10(e) and (f) of the Act. Thus, the issue herein is ripe for ruling. Compare the situation described in my dissent in *Overnite*, 334 NLRB No. 134, slip op. at 9, where I concluded that that case should be held in abeyance pending court action in *Overnite I*.